IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5431 of 2007
To
FIRST APPEAL No. 5433 of 2007
With
CIVIL APPLICATION No. 15515 of 2007
With
CIVIL APPLICATION No. 15517 of 2007
To
CIVIL APPLICATION No. 15518 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1.Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

==========

THE ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
MANGALBHAI GOTABHAI CHAVDA & 5 - Defendant(s)

==========

Appearance :
MR KK NAIR for Appellant(s) : 1,
MR HARDIK DAVE for HL PATEL ADVOCATES for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR HASMUKH THAKKER for Respondent(s) : 4,
MS KRUTI G SHAH for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 27/12/2007

ORAL JUDGMENT

1. Learned counsel for respondent No.4 Mr.Hasmukh Thakker has appeared with learned counsel Mr.Palak Thakker and learned counsel Mr.Hardik Dave has appeared for M/s.H.L.Patel Advocates for original claimants pursuant to the notices issued in the application for condonation of delay. It was jointly submitted and requested by learned counsel appearing on both sides that, in the peculiar facts and circumstances, the appeals may be heard and finally disposed at the admission stage.

2. The appeals under section 173 of the Motor Vehicles Act, 1988 ("the Act" for short) are preferred from the common award dated 23.4.2007 of MACT (Aux.), Nadiad in MACP Nos.1279 of 1996, 1280 of 1996 and 1346 of 1996 whereunder various amounts of compensation were ordered to be paid by the original opponents, including the present appellant, insurance company. Undisputably, the motor accident had happened on 09.6.1996 when two trucks, viz. GTG 3147 and ORO-2D-3251, had collided injuring several occupants of the former truck and killed one person. The appellant is the insurance company in respect of truck No.GTG 3147 and has assailed the award for the limited purpose of exonerating itself from

the liability in view of clear finding of fact that the accident was entirely attributable to negligence on the part of driver of truck No.ORO-2D-3251.

3. It was fairly conceded at the bar that the aforesaid finding of fact was not perverse, could not be challenged and, in fact, was not challenged by the driver, owner or insurance company of truck No.ORO-2D-3251. It was also submitted that the insurance company of that truck, i.e. respondent No.4 herein, had already deposited 50% of the amounts due under the award even though no such bifurcation of liability was made in the impugned award. Thus, in any case, liability of the original opponents was joint and several and respondent No.4 herein was legally responsible to deposit the full amounts due under the impugned award. In view of the aforesaid undisputed finding of fact, it would be proper and in the interest of justice to allow the appeals so as to exclude the appellant from the liability to satisfy the impugned award. Accordingly, the appeals are allowed so as to exclude the appellant from the liability to pay any amount under the impugned award with the direction that the amounts deposited by the appellant with this Court for the purpose of appeal under section 173 of the Act shall be

refunded to it by cheques in its name through its learned advocate; and respondent No.4 is directed to deposit the remaining amount due under the impugned award in terms of the provisions of sub-section (3) of section 168 of the Act.

4. Civil Applications do not survive in view of disposal of the appeals and accordingly stand disposed.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)